

Decision of the Compliance Audit Committee

This is a decision of the Compliance Audit Committee (the “Committee”) of the Corporation of the City of Cornwall (“Cornwall”) appointed to deal with election compliance issues pursuant to the *Municipal Elections Act*, S.O. 1996 c. 32, as amended (the “*Act*”).

The Committee is composed of Wes Libbey, Naresh Bhargava and Rachel Poirier.

The purpose of the Committee’s proceeding was to address two written complaints alleging contraventions of the *Act* by Mayor Bernadette Clement in the last municipal election. The first complaint was dated April 23, 2019, from Jamie Gilcig. The second complaint was dated April 24, 2019 and received from Nicole Spahich. Both complaints attached a copy of the Mayor’s financial report as filed with the Clerk of the municipality. Neither complaint sought nor requested a compliance audit. Nevertheless, the Committee received the complaints pursuant to section 88.33(1) of the *Act*.

Following the delivery of the two complaints, the Committee received a detailed written submission from Mayor Bernadette Clement (the “Mayor”) whom the complaints alleged contravene the *Act*. The Mayor filed a 9-page statement with 12 attachments, including correspondence and statements from others. In addition, the Committee received a signed memorandum from Manon Levesque, the City Clerk of Cornwall, together with 13 attachments. The matter in issue relates to whether or not the Mayor exceeded her self-contribution limits under s. 88.9.1 of the *Act*, which states:

- (1) *A candidate for an office on a council and his or her spouse shall not make contributions to the candidate’s own election campaign that, combined, exceed an amount equal to the lesser of,***
 - (a) *the amount calculation by adding,***

- (i) *in the case of a candidate for the office of head of counsel of a municipality, \$7,500 plus 20 cents for each elector entitled to vote for the office. ...*
- (2) *For the purposes of subsection (1), for a regular election the number of electors is the greater of the following:*
 - 1. *The number determined from the voters' list from the previous regular election, as it existed on September 15 in the year of the previous election, adjusted for changes made under sections 24 and 25 that were approved as of that day.*
 - 2. *The number determined from the voters' list for the current election, as it exists on September 15 in the year of the current election, adjusted for changes made under sections 24 and 25 that are approved as of that day. ...*
- (4) *The clerk shall calculate the maximum amounts permitted by subsection (1) for each office for which nominations were filed with him or her and, subject to subsection (5), give a certificate of the applicable maximum amounts to each candidate.*
 - (a) *in the case of a regular election, on or before September 25.*
 - (5) *If the applicable maximum amount for a candidate under subsection (1) is \$25,000, the clerk is not required to give a certificate of the applicable maximum amount to that candidate under subsection (4).*
(emphasis added)

Therefore, where the Clerk calculates the number of electors entitled to vote from the voting lists identified in section 88.9.1(2) of the *Act* and concludes that the maximum amount of a candidate's self-contribution is \$25,000, the Clerk is not required to provide candidates with a certificate identifying the maximum amount for self-contribution. Where, however, the amount is less than \$25,000, the Clerk is required by the *Act* to provide candidates with a certificate indicating the maximum amount, which a candidate may self-contribute under subsection 1.

The complaint of Mr. Gilcig alleges that the Mayor exceeded her self-contribution limit. The complaint of Ms. Spahich is silent on that issue, but simply says: "Subject: overspending on her campaign."

The facts are not in dispute.

The Mayor filed her nomination for office. Upon filing nomination forms, candidates received a package from the Clerk, which had only an estimated maximum campaign expense contained in it

as prepared by the government of Ontario. That document, was based on the 2014 municipal election numbers and did not contain a “certificate” as required by the *Act*, or any information in relation to the number of voters on the current list (2018) in accordance with section 88.9.1(2). The information candidates received was contained in what was called a candidate’s guide, which was handed out by the Clerk of Cornwall, Ms. Levesque.

The voters’ list in Cornwall was not finalized until August of 2018. At that time, Ms. Levesque, acting as Clerk, prepared a certificate of maximum campaign expenses pursuant to the *Act*, but she did not deliver it to any candidate. The certificate was finalized by the Clerk on August 14 and she prepared it with the intention of issuing it to candidates. The Clerk indicated in her signed statement submitted to the Committee that:

Upon investigation and conducting an audit of my outgoing emails, I realized that, although I had prepared the certificate of maximum campaign expenses, I had not sent it to the candidates.

Therefore, no candidate, including the Mayor, received the certificate of maximum amounts relating to self-contribution as required by section 88.9.1(4) of the *Act*. That section of the *Act* states:

(4) The clerk shall calculate the maximum amounts permitted by subsection (1) for each office for which nominations were filed with him or her and, subject to subsection (5), give a certificate of the applicable maximum amounts to each candidate. (emphasis added)

The Committee reads this section, 88.9.1(2), of the *Act* as being obligatory. As noted, section 88.9.1(5) provides that no certificate is required to be issued, nor will one be delivered if the maximum amount of self-contribution is \$25,000 or greater.

Etienne St. Aubin, the Mayor’s campaign manager, provided a statement and appeared before the Committee. He indicated that the Clerk never issued a certificate confirming the amount of the

self-funding limit as required by the *Act* and that, on that basis, he and the Mayor believed that the self-contribution funding limit for the Mayor's campaign was \$25,000.

On March 25, 2019, the Clerk received and reviewed the Mayor's financial statement as was required to be filed by the *Act* after the election. Upon review of that document, the Clerk concluded that the Mayor had exceeded her self-contribution limit as the Clerk calculated it. At the same time, the Clerk reviewed her emails and realized that, although she had prepared the certificate, she had not sent it out to the candidates and did not send it to the Mayor or the Mayor's campaign manager.

The Mayor was immediately informed of this issue on April 8, 2019, and on April 9, 2019, the Mayor filed a letter with the Clerk stating:

On March 22, 2019, I filed with your office my campaign financial statement as required by the Municipal Elections Act.

Yesterday, I was advised by Ms. Maureen Adams, the City's Chief Administrator Officer, that I had exceeded the amount that I was personally allowed to contribute to my election campaign pursuant to the Act. Needless to say, I was deeply alarmed and concerned by this information.

As you are aware, the Ministry of Municipal Affairs introduced a series of new rules for the 2018 Elections which included an amendment to the maximum amount that a candidate may contribute to his or her campaign. The Act now provides that this amount is the lesser of the amount calculated by a formula based on the number of eligible electors or \$25,000.

The Act further provides that all candidates were to receive a certificate stating the maximum personal contribution limit by September 25, 2018.

Unfortunately, I was not issued such a certificate as required by the Act and this may have had an impact on my campaign manager's understanding of the new rules.

It has now been made clear that if I had received this certificate, it would have indicated that the maximum contribution was set at \$14,058.80, instead, I contributed \$18,357 as my campaign manager understood that I could contribute up to \$25,000. I acknowledge that I must now self-report that there was an over-contribution of \$4,274.60.

The Mayor also immediately posted information about this issue to her Facebook page and, accordingly, brought it to the public's attention. It was following these events that the two complaints were filed. Ms. Spahich was an unsuccessful candidate in the election.

On May 15, 2019 the Committee met in public. In advance of the Committee's meeting, it distributed to both of the complainants and to the Mayor all of the materials referred to in the first paragraph of this letter in order to allow the complainants and the Mayor to make informed oral submissions to the Committee. The Committee called for both the complainants and the Mayor to make oral submissions to the Committee if they chose. Both complainants and the Mayor and her representative, Etienne St. Aubin, made submissions to the Committee. In addition the Clerk, Ms. Levesque, was present during the Committee's public meeting. No one complained that they had insufficient time or insufficient disclosure to adequately prepare for the delivery of their submissions.

The Committee has concluded that it has no reasonable basis to believe a contravention of the *Act* has taken place. Accordingly, the Committee rejects the complaints for the following reasons:

1. The Mayor admitted the amount of the alleged over-contribution as soon as it was brought to her attention. She filed a letter with the Clerk and publicly disclosed this information on her Facebook account. There is no reasonable basis to believe that the admitted amount is incorrect. It is reflected directly on the face of the Mayor's financial statement. Accordingly, there is no reasonable basis to believe that a compliance audit will add any further information or show any additional amount in issue.
2. There was no submission by either complainant that there was any violation that took place other than the alleged over self-contribution. The Committee reviewed the Mayor's financial statement and concluded that there is no reasonable basis to believe that any issue

arises other than the issue regarding the self-contribution limit. Accordingly, a compliance audit will not provide the Committee with any further or additional information. There is, simply put, no reasonable basis to believe that a compliance audit will provide further any information, nor will it reveal a reasonable basis for any other violation or issue other than the alleged contravention of the self-contribution limit.

3. The amount of the Mayor's self-contribution was made inadvertently and in error.
4. The Mayor's self-contribution was specifically induced by the failure of the Clerk to issue a certificate under section 88.9.1(4). The failure of the Clerk to issue a certificate entitled the Mayor to conclude that her self-contribution limit was \$25,000. In any event, the self-contribution spending limits were new, and the complexity in or around the issue both for the municipality as well as for candidates, led to the error which took place.
5. The Mayor won the election by a very substantial majority. There is no evidence nor any suggestion that the election was in any way affected by the Mayor's alleged excess self-contribution which the Committee considers in any event to be minor.
6. Neither complainant sought a compliance audit from the Committee. When asked at the hearing if they were seeking a compliance audit, both complainants specifically told the Committee they were not seeking a compliance audit, but rather were seeking a prosecution.

Even if the Committee had concluded that a compliance audit was necessary and ultimately received one, which confirmed the admitted amount regarding the self-contribution limit as calculated by the Clerk, the Committee would, in any event, have specifically declined to commence legal proceedings against the Mayor for all of the foregoing reasons. In addition, the Committee reached the foregoing decision based on the overall public interest as well as giving

due consideration for the need for general deterrence with respect to campaign finances and the need for the Mayor to be specifically deterred from possible future contraventions. The Committee also considered and concluded that the Mayor's alleged excess on the self-contribution limit was inadvertent. It was not deliberate. The excess over the self-contribution limit as calculated by the Clerk was induced by an error as a result of a certificate not being issued. The Committee has also considered the overall public interest by giving due consideration to whether the contravention was substantive or merely technical in nature. Accordingly, the Committee rejects the complaints, declines to order a compliance audit and, as indicated, even if a compliance audit were to be ordered (which ultimately confirmed the admitted amount in issue), the Committee would specifically decline to refer the matter to a legal proceeding against the Mayor for the reasons given.

May 15, 2019

Rachel Poirier
Rachel Poirier, Chair

Naresh Bhargava
Naresh Bhargava

Wes Libbey
Wes Libbey